

MEMO ENDORSED

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 4/12/2021

UNITED STATES DISTRICT COURT
for The SOUTHERN DISTRICT OF
NEW YORK

JASON MARLEY
MOVANT

vs.

CRIMINAL case No:

1:16-CJ-00374-VEC

UNITED STATES OF AMERICA
Respondent

DEFENDANT'S MOTION FOR EXTENSION OF TIME TO
FILE HIS MOTION TO VACATE, SET ASIDE, OR CORRECT
SENTENCE, PURSUANT TO 28 U.S.C. § 2255

COMES NOW the MOVANT, JASON MARLEY in PROSE
in necessity, and hereby moves this Honorable Court
to ISSUE AN ORDER granting a ninety (90) day
Extension of time to file his Motion to VACATE
Set Aside, or Correct Sentence pursuant to 28 U.S.C. §
2255.

The MOVANT avers that He has just recently beco-
me aware that His Conviction/sentence was obtained

under a Constitutional violation that resulted in the fundamental miscarriage of Justice and/or incarceration of an ACTUALLY INNOCENT Defendant. In support, the Movant/Defendant shows the Court the following

1. The Movant's deadline HAS not yet been reached but rapidly approaches.

The Movant HAS just recently discovered a Constitutional violation in the criminal process that it produced His conviction/sentence and wish to file His request for relief, in GOOD FAITH, pursuant to 28 U.S.C. § 2255.

The Movant HAS requested from this Court an § 2255 Application in order to file His Motion to vacate, set aside, or correct a sentence pursuant to 28 U.S.C. § 2253. For such Motion to be timely, the Movant must file within one year of His criminal conviction becoming final, or from other events according to statute. The Application the Movant seeks are necessary for preparation of such pleading.

The Movant HAS Made Attempts to request U.S.C. § 2255 Application from the Clerk this my third request in Hope that the Court would be so kind as to provide with the 28 U.S.C. § 2255 Application to file ~~one~~ time.

This Motion is Made in GOOD FAITH, in the interest of Justice, and Not Meant to delay the proceedings The United States nor any other Adverse party will be prejudiced by a ninety (90) day delay. until the Movant obtained the U.S.C. § 2255 Application to file His Motion.

WHEREFORE NOW, Above premises Considered, the Movant respectfully MOVES this Honorable Court to GRANT Him a ninety (90) day extension time to file His 28 U.S.C. § 2255 Motion

Done this 26, Day of MARCH 2021

Respectfully Submitted,
LASON MARLEY

Allenwood medium
P.O. Box 2000
White Deer, PA 17887

Application DENIED. "[A] district court may grant an extension of time to file a motion pursuant to section 2255 only if (1) the moving party requests the extension upon or after filing an actual section 2255 motion, and (2) 'rare and exceptional' circumstances warrant equitably tolling the limitations period." *Green v. United States*, 260 F.3d 78, 82-83 (2d Cir. 2001). While a district court can and perhaps should treat a *pro se* motion "nominally seeking an extension of time[that] contains allegations sufficient to support a claim under section 2255" as a substantive motion for relief under section 2255, here, Mr. Marley's motion contains no such allegations. *Id.* at 83. Accordingly, the Court may not construe it as a substantive motion under section 2255 and may not consider his request for an extension of time to file such a motion. The Court encourages Mr. Marley to make every effort to file his 2255 motion within the one-year statute of limitations. Should he fail to do so, upon filing a substantive motion for relief under section 2255, Mr. Marley should include any equitable justifications for why his time to file a section 2255 motion should be tolled, including "any facts that show that he has been pursuing his rights diligently and that some extraordinary circumstance prevented him from timely submitting his motion." *Santillan v. United States*, No. 20-CV-5999, 2020 WL 8770914, at *1 (S.D.N.Y. Aug. 6, 2020)(citing *Green*, 260 F.3d at 86). Mr. Marley is warned, however, that equitable tolling applies only in rare and exceptional circumstances, and thus the Court is unlikely to grant any after-the-fact request for equitable tolling.

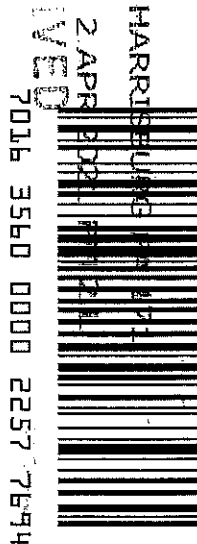
The Clerk of Court is respectfully directed to mail a copy of this Order to Mr. Marley. The Clerk of Court is also instructed to include with this Order a copy of the Instructions for Filing Motion under 28 U.S.C. § 2255 and accompanying form, accessible at: <https://www.nysd.uscourts.gov/sites/default/files/2019-04/2255-aomotion-and-instructions.pdf>.

SO ORDERED.

Valerie Caproni
4/12/2021

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE

INMATE NAME/NUMBER: Jason Marley #08283068
FEDERAL CORRECTIONAL COMPLEX-ALLENWOOD Medium
P.O. BOX 2000
WHITE DEER, PA 17887



To: Clerk of Court
for the Southern District
of New York
40 Foley Square
NY, NY 10007

